

S. B. 707

By Sherman
Sherman

A BILL

To Be Entitled

AN ACT amending Section 9 of Chapter 264, Acts of the 59th Legislature, Regular Session, 1965, as last amended by Chapter 376, Acts of the 61st Legislature, Regular Session, 1969 (Codified as Art. 7621e of Vernon's Texas Civil Statutes); providing changes in the methods for appeal from the Water Well Drillers Board to the Courts of Travis County, Texas; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Hereafter Section 9 of Chapter 264, Acts of the 59th Legislature, Regular Session, 1965, as last amended by Chapter 376, Acts of the 61st Legislature, Regular Session, 1969, (codified as Art. 7621e of Vernon's Texas Civil Statutes) is amended and it shall read as follows:

"Section 9. Appeal of Board Action.

(a) A person affected by any ruling, order, decision or other acts of the Board may appeal by filing a petition in the District Court of Travis County, Texas.

(b) Petition must be filed within thirty days after the date of the Board's action, or, in case of a ruling, order, or decision, within 30 days after its effective date.

(c) Service of citation on the Board must be accomplished within 30 days after the date the petition was filed. Citation may be served on the Executive Director of the Water Development Board or on any member of the Water Well Drillers Board.

(d) The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within one year after the action is filed, the Court shall presume

that the action has been abandoned. The Court shall dismiss the suit on a Motion for Dismissal made by the Attorney General unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

(e) In an appeal of a Board action other than revocation or suspension of a certificate of registration, the issue is whether the action is invalid, arbitrary or unreasonable.

(f) An appeal of the revocation or suspension of a certificate of registration shall be tried in the same manner as appeals from the justice court to the county court. All administrative or executive action taken prior to the filing of the suit shall continue in force and effect until the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy."

Section 2. The fact that there is no adequate provision for appeals to the Courts from the administrative agency creates an emergency and imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the Rule is hereby suspended.

Austin, Texas

March 29, 1971

Hon. Ben Barnes
President of the Senate

Sir:

We, your Committee on Water and Conservation,
to which was referred S. B. No. 701, have had the same
under consideration, and I am instructed to report it back to
the Senate with the recommendation that it do _____
pass _____ and be _____ printed.


Chairman Creighton

BILL ANALYSIS**BACKGROUND INFORMATION:**

Article 7621e Sec. 9 V.T.C.S. provides for appeals from Water Well Drillers Board. Changes in law are set out in Section 1.

PURPOSE OF THE BILL:

To amend the section concerning appeals of the Water Well Drillers Act by providing for venue in all cases in the District Court of Travis County; providing for a deadline for the filing of petitions, for service of citations, and for the prosecution of action; providing that in cases not concerning suspension or revocation of certificates, the issue is whether the action is invalid, arbitrary, or unreasonable; providing that action taken before the filing of a petition shall continue in effect until a decision is reached by the court; and by removing a provision that prohibits the application of the substantial evidence rule.

SECTION BY SECTION SUMMARY:

Section 1: Amends Section 9 of Articles 7621e, VTCS (the Water Well Drillers Act).

Section 9. Appeal of Board Action

- (a) A person affected by a board decision may appeal by filing a petition in District Court of Travis County. (Present law provides for venue in the county of residence of the aggrieved person.)
- (b) Petition must be filed within 30 days after the effective date of the board's action. (Present law has no similar provision.)
- (c) Service of citation on the board must come within 30 days of the filing of the petition. (Present law has no similar provision.)
- (d) If the plaintiff does not prosecute his action within one year after filing, the Court shall presume the action has been abandoned. Unless the plaintiff shows good cause for the delay, the Court shall dismiss the suit on a motion for dismissal made by the Attorney General. (Present law has no similar provision.)
- (e) In an appeal concerning a matter other than suspension or revocation of a certificate, the issue is whether the action is invalid, arbitrary, or unreasonable. (Present law has no similar provision.)
- (f) An appeal concerning suspension or revocation of a certificate shall be tried in the same way as appeals from a justice court to a county court. All action taken before the filing shall continue in effect until the rights of the parties are determined by the court upon a trial of the matters in con-

SRS

March 18, 1971

troversy. (Present law provides that administrative or executive action taken before the filing shall not continue in effect until the matters are decided in court.) The present law states that the substantial evidence rule may not be applied in appeals of board action. This provision is not included in this amending bill.

Section 2: Emergency clause

SRS

March 18, 1971

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10-11-11
11-11-11
By: Sherman

S. B. No. 701

A BILL TO BE ENTITLED

AN ACT

amending Section 9 of Chapter 264, Acts of the 59th Legislature, Regular Session, 1965, as amended (codified as Article 762le of Vernon's Texas Civil Statutes); providing changes in the methods for appeal from the Water Well Drillers Board to the Courts of Travis County, Texas; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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"Section 9. Appeal of Board Action.

"(a) A person affected by any ruling, order, decision or other acts of the Board may appeal by filing a petition in the District Court of Travis County, Texas.

"(b) Petition must be filed within thirty (30) days after the date of the Board's action, or, in case of a ruling, order, or decision, within thirty (30) days after its effective date.

"(c) Service of citation on the Board must be accomplished within thirty (30) days after the date the petition was filed. Citation may be served on the Executive Director of the Water Development Board or on any member of the Water Well Drillers Board.

"(d) The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within

one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a Motion for Dismissal made by the Attorney General unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

"(e) In an appeal of a Board action other than revocation or suspension of a certificate of registration, the issue is whether the action is invalid, arbitrary or unreasonable.

"(f) An appeal of the revocation or suspension of a certificate of registration shall be tried in the same manner as appeals from the justice court to the county court. All administrative or executive action taken prior to the filing of the suit shall continue in force and effect until the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy."

Sec. 2. The fact that there is no adequate provision for appeals to the courts from the administrative agency creates an emergency and imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the Rule is hereby suspended.

1 By: Sherman

S. B. No. 701

2 (In the Senate. --March 11, 1971, Filed with the Secretary of the Senate;
3 March 15, 1971, read, referred to Committee on Water and Conservation:
4 March 29, 1971, reported favorably; April 22, 1971, read second time and
5 ordered engrossed; April 22, 1971, Senate and Constitutional 3-Day Rules
6 suspended by vote of 31 yeas, 0 nays to place bill on third reading and final
7 passage; April 22, 1971, read third time and passed by 31 yeas, 0 nays.)

8 CHARLES SCHNABEL
9 Secretary of the Senate

10 April 22, 1971, Engrossed.

11 BEA LEWIS
12 Engrossing Clerk

13 April 22, 1971, Sent to House.

14 April 22, 1971, Received from the Senate.

15 DOROTHY HALLMAN

16 Chief Clerk, House of Representatives

17 (In the House. --April 26, 1971, read first time and referred to Committee
18 on Judiciary: May 12, 1971, reported favorably, as amended, by unanimous
19 voice vote, sent to Printer.)

20 A BILL
21 TO BE ENTITLED

22 AN ACT amending Section 9 of Chapter 264, Acts of the 59th
23 Legislature, Regular Session, 1965, as amended
24 (codified as Article 7621e of Vernon's Texas Civil
25 Statutes); providing changes in the methods for appeal
26 from the Water Well Drillers Board to the Courts of
27 Travis County, Texas; and declaring an emergency.

28 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

29 Section 1. Hereafter Section 9 of Chapter 264, Acts of the 59th Legislature,
30 Regular Session, 1965, as amended (codified as Article 7621e of Vernon's
31 Texas Civil Statutes), is amended and it shall read as follows:

32 "[Sec.] Section 9. Appeal of Board Action.

33 "(a) A person affected by any ruling, order, decision or other acts of the
34 Board may appeal by filing a petition in the District Court of Travis County,
35 Texas.

36 "(b) Petition must be filed within thirty (30) days after the date of the
37 Board's action, or, in case of a ruling, order, or decision, within thirty
38 (30) days after its effective date.

39 "(c) Service of citation on the Board must be accomplished within thirty
40 (30) days after the date the petition was filed. Citation may be served on
41 the Executive Director of the Water Development Board or on any member
42 of the Water Well Drillers Board.

43 "(d) The plaintiff shall pursue his action with reasonable diligence. If
44 the plaintiff does not prosecute his action within one year after the action is
45 filed, the court shall presume that the action has been abandoned. The court
46 shall dismiss the suit on a Motion for Dismissal made by the Attorney General
47 unless the plaintiff, after receiving due notice, can show good and sufficient
48 cause for the delay.

49 "(e) In an appeal of a Board action other than revocation or suspension of
50 a certificate of registration, the issue is whether the action is invalid, arbi-
51 trary or unreasonable.

52 "(f) An appeal of the revocation or suspension of a certificate of registra-
53 tion shall be tried in the same manner as appeals from the justice court to
54 the county court. All administrative or executive action taken prior to the
55 filing of the suit shall continue in force and effect until the rights of the
56 parties thereto shall be determined by the court upon a trial of the matters
57 in controversy."

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1 [In all appeals prosecuted in any of the courts of this State pursuant to
2 the provisions of this Act, such trials shall be de novo as that term is
3 used and understood in appeals from justice of the peace courts to county
4 courts. When such an appeal is filed and the court thereby acquires jurisdic-
5 tion, all administrative or executive action taken prior thereto shall be null
6 and void and of no force and effect, and the rights of the parties thereto
7 shall be determined by the court upon a trial of the matters in controversy
8 under rules governing the trial of other civil suits in the same manner and
9 to the same extent as though the matter had been committed to the courts in
10 the first instance and there had been no intervening administrative or executive
11 action or decision. Under no circumstances shall the substantial evidence
12 rule as interpreted and applied by the courts of Texas in other cases ever
13 be used or applied to appeals prosecuted under the provisions of this Act.
14 The Legislature hereby specifically declares that the provisions of this
15 Section shall not be severable from the balance of this Act, and further
16 specifically declares that this Act would not have been passed without the
17 inclusion of this Section. If this Section, or any part thereof, is for any
18 reason ever held by any court to be invalid, unconstitutional or inoperative
19 in any way, such holding shall apply to this entire Act, and in such event
20 this entire Act shall be null, void and of no force and effect. Venue of all
21 appeals shall be in the county of the residence of the aggrieved person who
22 files the appeal.]

23 Sec. 2. The fact that there is no adequate provision for appeals to the
24 courts from the administrative agency creates an emergency and impera-
25 tive public necessity that the Constitutional Rule requiring bills to be read
26 on three several days in each House be suspended, and the Rule is hereby
27 suspended.

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29 COMMITTEE AMENDMENT NO. 1

30 Amend S. B. 701 by striking all below the enacting clause and substituting
31 in lieu thereof the following:

32 Section 1. Hereafter Section 9 of Chapter 264, Acts of the 59th Legislature,
33 Regular Session, 1965, as last amended by Chapter 376, Acts of the 61st
34 Legislature, Regular Session, 1969, (codified as Art. 7621e of Vernon's
35 Texas Civil Statutes) is amended and it shall read as follows:

36 "[Sec.] Section 9. Appeal of Board Action.

37 (a) A person affected by any ruling, order, decision or other acts of the
38 Board may appeal by filing a petition in the District Court in the county in
39 which the alleged violation occurred.

40 (b) Petition must be filed within thirty days after the date of the Board's
41 action, or, in case of a ruling, order, or decision, within 30 days after
42 its effective date.

43 (c) Service of citation on the Board must be accomplished within 30 days
44 after the date the petition was filed. Citation may be served on the Executive
45 Director of the Water Development Board or on any member of the Water
46 Well Drillers Board.

47 (d) The plaintiff shall pursue his action with reasonable diligence.

48 Any ruling of the board may be appealed in the same manner as appeals
49 from the justice court to the county court. All administrative or executive
50 action taken prior to the filing of the suit shall continue in force and effect
51 until the rights of the parties thereto shall be determined by the court upon
52 a trial of the matters in controversy.

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9 same manner and to the same extent as though the matter had been committed
10 to the courts in the first instance and there had been no intervening
11 administrative or executive action or decision. Under no circumstances
12 shall the substantial evidence rule as interpreted and applied by the courts
13 of Texas in other cases ever be used or applied to appeals prosecuted
14 under the provisions of this Act. The Legislature hereby specifically
15 declares that the provisions of this Section shall not be severable from the
16 balance of this Act, and further specifically declares that this Act would
17 not have been passed without the inclusion of this Section. If this Section,
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19 unconstitutional or inoperative in any way, such holding shall apply to this
20 entire Act, and in such event this entire Act shall be null, void and of no
21 force and effect. Venue of all appeals shall be in the county of the residence
22 of the aggrieved person who files the appeal.]

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24 Courts from the administrative agency creates an emergency and imperative
25 public necessity that the Constitutional Rule requiring bills to be read
26 on three several days in each House be suspended, and the Rule is hereby
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Moore

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COMMITTEE REPORT

COMMITTEE ROOM

Austin, Texas, May 5, 1971

Hon. G. F. (Gus) Mutscher, Speaker of the House of Representatives.

SIR: We, your Committee on Judiciary, to whom was referred S. B.

No. 701, have had the same under consideration and beg to report back

with recommendation that it do pass, and be not printed.

Committee Substitute was recommended and is to be printed in lieu of the original bill.

L. DeWitt Hale, Chairman

BILL ANALYSIS

Background Information:

Article 7621e Sec. 9 V. T. C. S. provides for appeals from Water Well Drillers Board. Changes in law are set out in Section 1.

Purpose of the Bill:

To amend the section concerning appeals of the Water Well Drillers Act by providing for venue in all cases in the District Court of Travis County; providing for a deadline for the filing of petitions, for service of citations, and for the prosecution of action; providing that in cases not concerning suspension or revocation of certificates, the issue is whether the action is invalid, arbitrary, or unreasonable; providing that action taken before the filing of a petition shall continue in effect until a decision is reached by the court; and by removing a provision that prohibits the application of the substantial evidence rule.

Section by Section Summary:

Section 1: Amends Section 9 of Articles 7621e, VTCS (the Water Well Drillers Act).

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Section 2: Emergency clause.

Summary of Committee Action:

Passed by unanimous voice vote.

FORM C

(For a favorable report on a bill where a "committee substitute" was recommended by the committee.)

COMMITTEE REPORT

Date May 5, 1971

HON. G. F. (GUS) MUTSCHER

Speaker of the House of Representatives.

Sir:

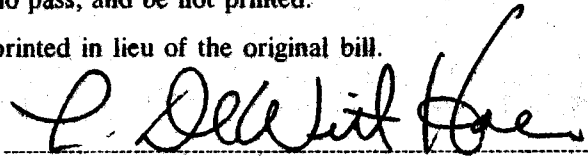
We, your Committee on Judiciary, to whom was referred S.B. No. 701, have had the same under consideration and beg to report back with recommendation that it do pass, and be not printed.

Committee Substitute was recommended and is to be printed in lieu of the original bill.

The Bill was reported from Committee by the following vote:

Unanimous voice vote

Yeas 10 Nays 0



Chairman.

(A "committee substitute" in the case of a bill is in the form of two suggested amendments, a new body and a new caption. Under the Rules a committee may authorize the printing of the "committee substitute" in lieu of the original bill. If the original caption is adequate, the "committee substitute" should be only a new body; and in such case the original caption should be printed along with the suggested new body.)

COMMITTEE AMENDMENT NO. 1

Amend S.B. 701 by striking all below the enacting clause and substituting in lieu thereof the following:

Section 1. Hereafter Section 9 of Chapter 264, Acts of the 59th Legislature, Regular Session, 1965, as last amended by Chapter 376, Acts of the 61st Legislature, Regular Session, 1969, (codified as Art. 7621e of Vernon's Texas Civil Statutes) is amended and it shall read as follows:

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(c) Service of citation on the Board must be accomplished within 30 days after the date the petition was filed. Citation may be served on the Executive Director of the Water Development Board or on any member of the Water Well Drillers Board.

(d) The plaintiff shall pursue his action with reasonable diligence.

~~(2) In an appeal of a Board action other than revocation or suspension of a certificate of registration, the issue is whether the action is invalid, arbitrary or unreasonable.~~

Any ruling of the board may be appealed
~~(2) An appeal of the revocation or suspension of a certificate of registration shall be tried~~ in the same manner as appeals from the justice court to the county court. All administrative or executive action taken prior to the filing of the suit shall continue in force and effect until the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy.

Sec. 2. The fact that there is no adequate provision for appeals to the Courts from the administrative agency creates an emergency and imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the Rule is hereby suspended.

MAY 23 1971 MAY 24 1971

DATE _____

READ AND ADOPTED

Lorely J. Saeman

CHIEF CLERK
HOUSE OF REPRESENTATIVES

J. Morrow

AN ACT

amending Section 9 of Chapter 264, Acts of the 59th Legislature, Regular Session, 1965, as amended (codified as Article 7621e of Vernon's Texas Civil Statutes); providing changes in the methods for appeal from the Water Well Drillers Board to the Courts of Travis County, Texas; and declaring an emergency.

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Sec. 2. The fact that there is no adequate provision for appeals to the courts from the administrative agency creates an emergency and imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the Rule is hereby suspended.

Lieutenant Governor

Speaker of the House

I hereby certify that S. B. No. 701 passed the Senate on April 22, 1971, by the following vote: Yeas 31, Nays 0; May 21, 1971, Senate concurred in House amendments by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S. B. No. 701 passed the House on May 19, 1971, with amendments, by the following vote: Yeas 143, Nays 0, and two present not voting.

Chief Clerk of the House

Approved:

5-26-71
Date

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
4:15 PM O'CLOCK

MAY 26 1971

Signed - 90 day bill
Governor

Secretary of State

Shirley

MAY 25 1971

S.B. No. 701
S.B.

By Sherman

AN ACT amending Section 9 of Chapter 264, Acts of 59th Legis., R.S., 1965, as last amended by Chapter 376, Acts 61st Legis., R.S., 1969 (Codified as Art. 7621e, Vernon's Tex. Civil Statutes); providing changes in the methods for appeal from the Water Well Drillers Board to the Courts of Travis County, Tex.; and declaring emergency.

2-11-71 Filed with the Secretary of the Senate

MAR 15 1971 Read, referred to Committee on Water and Conservation

MAR 29 1971 Reported favorably.

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed.

Senate and Constitutional Rules to permit consideration suspended by
unanimous consent.
_____ years, _____ days.

To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ years, _____ days.

APR 22 1971 Read second time and { ordered engrossed.
~~passed to third reading.~~

Caption ordered amended to conform to body of bill.

APR 22 1971 Senate and Constitutional 3-Day Rules suspended by vote of
31 years, 0 days to place bill on third reading and final passage.

APR 22 1971 Read third time and passed by { ~~a viva voce vote.~~
31 years, 0 days.

OTHER ACTION:

Charles Schnabel

Secretary of the Senate

4-22-71 Engrossed

APR 22 1971 Sent to HOUSE

ENGROSSING CLERK

APR 22 1971

Received from
the Senate.

Dorothy Hallman

Chief Clerk, House of Representatives

APR 26 1971

READ 1st TIME
AND REFERRED TO COMMITTEE ON

Judiciary
Dorothy Hallman

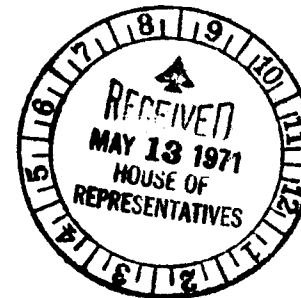
Chief Clerk, House of Representatives

MAY 12 1971

REPORTED FAVORABLE

SENT TO PRINTER

AS AMENDED



Ward

PRINTED, DISTRIBUTED AND

REFERRED TO COMMITTEE ON

RULES 9:30 4 M.

(Time)

(Date)

MAY 13 1971

MAY 19 1971
Motion to suspend all necessary rules to
consider prevailed by non-record vote.

MAY 20 1971
RETURNED with amendments
FROM HOUSE

Dorothy Hallman
Chief Clerk, House of Representatives

MAY 21 1971
Senate concurred in House amend-
ments by the following vote: 31
yeas, 0 nays.

MAY 19 1971 Read Second Time, amended
and passed to third reading by non- record vote.
of _____ yeas, _____ nays.

Dorothy Hallman
Chief Clerk, House of Representatives

MAY 19 1971 Read third time
and Passed
by following vote: yeas 143
Nays 0, 2 present
Dorothy Hallman
Chief Clerk
HOUSE OF REPRESENTATIVES

MAY 19 1971
MOTION TO RECONSIDER THE VOTE BY
WHICH S.B. No. 701 WAS
ADOPTED / PASSED AND TO TABLE THE MOTION TO RECON-
SIDER PREVAILED PASSED BY A non-record VOTE OF
AYES AND NAYES
Dorothy Hallman
CHIEF CLERK HOUSE OF REPRESENTATIVES

Unanimous consent granted to amend
caption of House Bill No. 701 to
conform to body of bill.

Dorothy Hallman
Chief Clerk, House of Representatives

MAY 19 1971 RETURNED TO SENATE